STATE OF MICHIGAN

IN THE SUPREME COURT

HARMONY MONTESSORI CENTER,

Petitioner-Appellant,

v

CITY OF OAK PARK,

Respondent-Appellee.

_____/

Supreme Court No. 154819

Court of Appeals No. 326870

Michigan Tax Tribunal
Case No. 0370214

RESPONDENT-APPELLEE, CITY OF OAK PARK'S SUPPLEMENTAL BRIEF

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The Court has directed the parties to address the following question: ". . . whether *Ladies Literary Club v Grand Rapids*, 409 Mich 748[;298 NW2d 422] (1980) and *David Walcott Kendall Memorial School v Grand Rapids*, 11 Mich App 231[;160 NW2d 778] (1968), continue to provide the appropriate test of what constitutes a 'nonprofit . . . educational . . . institution[]' under MCL 211.7n." Under *Ladies Literary Club*, and *Walcott*, an institution seeking an educational exemption under MCL 211.7n must fit within the general scheme of education provided by the state and supported by public taxation, and it must make a substantial contribution to the relief of the burden of government. The relevant inquiry as to whether the petitioner contributes to the relief of the burden of government is: "If the particular institution in issue were not in existence, then would, and could, a substantial portion of the student body who no attend that school instead attend a State-supported college or university to continue their advanced education in that same major field of study?" *Walcott*, 231 Mich App at 240. It is the position of the City of Oak Park that the test applied in both *Ladies Literary Club* and in *David Walcott Kendall*, is the appropriate test and that the Tax Tribunal in this case properly applied that test.

I. The *Walcott* and *Ladies Literary Club* test is and continues to be the appropriate test of what constitutes a "nonprofit . . . educational institution" under MCL 211.7n.

MCL 211.7n exempts from taxation, the following:

> Real estate or personal property owned and occupied by nonprofit . . . educational . . . institutions incorporated under the laws of this state with

> the buildings and other property thereon while occupied by them solely for the purposes for which the institutions were incorporated is exempt from taxation under this act.

The term "educational … institution" is not defined under the statute and "educational" is susceptible to many dictionary definitions. When construing a term which is not specifically defined and which is susceptible to many definitions, this Court strives to determine from among those definitions ". . . which the Legislature most reasonably intended by the specific context in which the term is found." *People v Hill*, 486 Mich 658, 669; 786 NW2d 601, 607 (2010). In this case, then, the proper construction of the term "educational institution" must be consistent within the context of the state's overall statutory taxation scheme.

It cannot be questioned that a foundational premise of our state taxation system is that the burden of taxation falls on all and, because a tax exemption is an "unequal removal of the burden generally imposed on all landowners to share in the support of local government," statutory exemptions must be strictly construed in favor of the taxing entity. *Michigan Baptist Homes & Development Co v Ann Arbor*, 396 Mich 660, 669-670; 242 NW2d 749 (1976) (Because exemption is the antithesis of tax equality, exemption statutes are to be strictly construed in favor of the taxing unit). The purpose of each taxpayer's contribution is to support the services which are funded by the taxes collected. One of those services funded by general tax collection is the education of the public. If the legislature determines that there is a basis for exempting a particular taxpayer from contributing its share in support of the educational services provided by the taxing entity, it is reasonable to construe the term "educational" to be quantitatively

and qualitatively equivalent to the educational services provided by the State and supported by public taxation.

Indeed, this construction is consistent with Michigan courts' historical construction of statutory exemptions for educational institutions.[1] For more than a century, when called upon to evaluate the meaning of statutory tax exemptions for educational institutions, Michigan courts have examined the qualitative and quantitative nature of the educational services provided by an entity seeking tax exempt status and compared those services with the educational services provided by the State and supported by public taxation.

In *Detroit Home & Day School v City of Detroit*, 76, Mich 521; 43 NW 593 (1889), this Court considered whether the petitioner corporation, which was organized to provide "general" educational services,[2] was exempt from taxation under the statute which, at that time, exempted "[l]ibrary, benevolent, charitable, and scientific institutions." A majority of the Court construed the term "scientific institutions" to include general educational corporations such as the petitioner, referencing the importance of education to "good government":

> . . . We need not, in our history, go beyond the ordinance of 1787, which declares that - -

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[1] As this Court recently instructed, the proper analysis of an undefined term in a tax exemption statute should include analysis of the history of that term in our State's caselaw. *Baruch v Tittabawassee Twp*, ___ Mich ___; ___ NW2d ___ (June 28, 2017).

[2] The petitioner provided "course of studies and discipline . . . such as is usual in academies, and comprises the seven sciences - - grammar, logic, rhetoric, arithmetic, geometry, music and astronomy. . . ." *Id* at 526. In addition, the petitioner was also " . . . subject to the visitation and examination of the Superintendent of Public Instruction, and a board of visitors appointed by him." *Id.*

> "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.
>
> Exemption from taxation is the only form of encouragement that our laws provide. That they have always provided, and they have not required tuition to be free, even in our public institutions, most, if not all, of which, except in favored circumstances, derive considerable revenue from pupils. The advantage of multiplying the facilities of learning has been rightly regarded as worth to any decent community very much more than can be counted in money.

Id at 523-524.

In *Parsons Business College v Kalamazoo*, 166 Mich 305; 131 NW 553 (1911), this Court noted that the statute at issue in *Detroit Home & Day School*, had been amended to specifically exempt "educational" institutions in addition to library, benevolent, charitable, and scientific institutions, so long as the property at issue was occupied by such institutions "solely" for these purposes. *Id* at 308-309. In explaining the standard established in *Detroit Home & Day School* for determining whether a petitioner qualified as an "educational institution," the *Parsons* Court referenced the educational services provided by the State and supported by public taxation:

> The minority opinion [in *Detroit Home & Day School*] shows that this was a school with kindergarten, primary, preparatory, and collegiate departments, with course of instruction in all the elementary and advanced sciences, and ancient and modern languages. In the advanced departments there were the courses of instruction usual in the colleges of this State. The court determined that it was a general educational establishment. The disagreement in the opinions is not upon that question, but whether a business venture, was within the legislative intent as expressed in the exemption law. The court without doubt was correct in classifying that school as a general educational institution. This is the "educational

> institution" intended by the legislature in the statute under consideration in the instant case. . . .

Id at 309-310. The petitioner in *Parsons* taught "bookkeeping, penmanship, business law as used in the ordinary work of the school, shorthand, typewriting, and correspondence, also grammar." *Id* at 308. The *Parsons* Court held that the petitioner did not qualify for the exemption as an educational institution because it was not organized and conducted for purposes of *general* education. In so doing, the Court contrasted the educational services provided by the petitioner with that provided by the State:

> Not that this institution and similar ones are not useful and very beneficial to a large class, but to put them, as complainant suggests, in the same class with Hillsdale, Olivet, Albion, and Kalamazoo colleges, well-known institutions in this State, would be giving this statute a construction which the facts will not warrant, and which evidently was not within the legislative intent, and contrary to the former construction.

Id at 310.

In *Webb Academy v Grand Rapids*, 209 Mich 523; 177 NW 290 (1920), the respondent city did not contest that the petitioner qualified as an educational institution, and the Court noted that the educational services offered by the petitioner were comparable to those services offered by the State:

> "Plaintiff is an educational and scientific institution, duly incorporated * * * subject to visitation by the school authorities of the State, pursuant to law.
>
> * * *
>
> "That the work the academy has done and is doing constitutes it a general educational institution, under the laws of the State. **This work is of the same character as that done in the public schools, and in preparatory academies**. Plaintiff is not a business college or other like special school."

Id at 527 (emphasis added).

In *Detroit v Detroit Commercial College*, 322 Mich 142; 33 NW2d 737 (1948), this Court cited *Webb, supra*, and again affirmed that the proper inquiry in evaluating whether a petitioner qualifies as an "educational institution" entitled to the statutory tax exemption is whether the petitioner fits within the general scheme of education provided by the State and supported by public taxation:

> It should be noted that the course of study prescribed by the Webb Academy fitted into the general scheme of education provided by the State and supported by public taxation. We think this was the test in the minds of the legislature when it enacted legislation providing for exemption from taxation of educational institutions. It clearly appears that the Detroit Commercial College is a specialized school operated for the purpose of training its students to enter into specialized fields of employment. It is not such a school or college as is entitled to tax exemption.

Id at 153.

In *Walcott*, the Court of Appeals evaluated the above case authority and found the "general" vs. "specialized" distinction antiquated in light of the "rapidly changing concept of mass education . . . ." *Id* at 238. The *Walcott* Court reasoned that the more appropriate inquiry, consistent with this Court's decision in *Detroit Commercial College*, was whether the quality of the education offered by the petitioner could be equated with similar, State-funded schools:

> We formulate the following test to be applied in dealing with schools of higher education which seek tax exemption drawn from prior cases and the factual situations before us: If the particular institution in issue were not in existence, then would, and could, a substantial portion of the student body who now attend that school instead attend a State-supported college or

> university to continue their advanced education in that same major field of study?

Id at 240. In order to determine whether students "would" attend a State-supported school, the *Walcott* Court provided the following guidance:

> The probability of their attendance elsewhere on the college or university level would have to be derived *inter alia* from the requirements for admission to the school seeking exemption, the qualifications of the student, the time necessary to complete the prescribed course of study, and the comparative quality and quantity of the courses offered by the school to the same programs at the State colleges and universities. If such an institution is educating students qualified and willing to attend a State college or university, majoring in the same field of study, then it can be said that this institution is assuming a portion of the burden of educating the student which otherwise falls on tax-supported schools.

Id. The Court of Appeals stated that it agreed with this Court in *Detroit Commercial College* that the educational services provided by the petitioner must also fall within the general scheme of education provided by the State and supported by public taxation. *Id* at 243. The Court concluded that the Kendall School satisfied this test, finding that, were it not for the Kendall School's existence, a substantial portion of the Kendall School student body could and would attend a State-supported school to continue their education in the field of creative design and art:

> Were it not for the existence of the plaintiff institution, it is clear that the burden imposed on the art and design departments of our State-supported colleges and universities would be appreciably increased.

Id.

Two subsequent Court of Appeals opinions provide further guidance as to what it means for a petitioner to substantially relieve the State's educational burden. In

American Concrete Institute v State Tax Commission, 12 Mich App 595; 163 NW2d 508 (1968), the Court of Appeals affirmed the denial of a tax exemption to an organization that collected, edited and published scientific research on concrete. The majority concluded that the petitioner was not a scientific institution under the exemption statute because it did not itself conduct research. *Id* at 607-608. Then Judge (later Justice) Levin concurred in the decision denying the requested exemption. Judge Levin disagreed with the majority that the petitioner was not a scientific institution, but agreed that it was not entitled to the exemption because the petitioner did not substantially relieve the burden of government:

> Something more than serving the public interest is required to bring one claiming exemption as an educational or scientific institution within the "goals and policies sought to be implemented by CL 1948 § 211.7, as amended by PA 1963, No 148, (Stat Ann 1965 Cum Supp § 7.7), CL 1948, § 211.9, as amended by PA 1964, No 275 (Stat Ann 1965 Cum Supp § 7.9)." [*Walcott*, *supra* at 243]. In the cited case, our Court declared that the general exemption under consideration may be availed of by an institution otherwise within its definition which makes a substantial contribution to the relief of the burden of government. Although the Court was then speaking of a claim of exemption as an educational institution, on principle its holding has equal application to the claim at hand.
>
> The question is one of degree. Each case will turn on its own facts and circumstances. As we move beyond the traditional charitable objectives, those of providing relief to persons unable to care for themselves, education and religion, we scrutinize more carefully claims of exemptions.
>
> In this case the State tax commission found that the American Concrete Institute had not established that its contribution to the relief of the burden of government was sufficiently substantial to warrant the claimed exemption. That conclusion is justified by the record and comports with the construction of the statute given by our Court in [*Walcott*].

Id at 609-610 (footnotes omitted).

In *American Society of Agricultural Engineers v St Joseph Twp*, 53 Mich App 45; 218 NW2d 685 (1974), the Court of Appeals held that the petitioner was entitled to an exemption as an educational or scientific institution because it substantially relieved the burden of the government. Endorsing the *Walcott* test and Judge Levin's concurrence in *American Concrete*, the Court found that the factual record amply supported the conclusion that the petitioner's activities substantially relieved the government of its burden:

> Testimony in the present case was overwhelming as to the savings to the state government, and the benefits to the sphere of agriculture and the entire public, from the work done by the plaintiff. Were it not for the existence of the plaintiff institution, it is clear that the burden imposed on the state government would be appreciably increased. Thus, the finding of the lower court that the plaintiff was an educational or scientific institution within the meaning of the exemption statutes was proper.

Id at 49-50.

Both *American Concrete* and *American Society of Agricultural Engineers* were cited with approval by this Court in *Ladies Literary Club v Grand Rapids*, 409 Mich 7498; 298 NW2d 422 (1980). In *Ladies Literary Club*, this Court was presented with a petitioner who conducted *some* activities which fell within the categories included within the exemption (i.e., a theater, a library, and benevolent and charitable activities), but largely conducted activities of a cultural or social nature. *Id* at 755. Because the petitioner argued that these cultural/social activities could be fairly characterized as "educational," this Court addressed the standard applicable for determining whether an

activity is educational, affirming the analysis employed in *Detroit Commercial College* and *Walcott*:

> In [*Detroit Commercial College*] our Court determined that an institution seeking an educational exemption must fit into the general scheme of education provided by the state and supported by public taxation. This proposition was refined in [*Walcott*] which declared that an educational exemption may be available to an institution otherwise within the exemption definition, if the institution makes a substantial contribution to the relief of the burden of government.

Id at 755-756 (footnote omitted). Despite the fact that the petitioner did conduct some activities which fell within the exemption definition, and therefore relieved some of the State's burden to support similar services with public taxation, the *degree to which* the State's burden was relieved by the petitioner was necessarily an equally determinative consideration:

> It cannot be maintained that were it not for the Ladies Literary Club's programs, which enhance educational and cultural interests, the burden on the state would be proportionally increased. The club's programs do not sufficiently relieve the government's educational burden to warrant the claimed educational institution exemption. See *American Society of Agricultural Engineers v St Joseph Twp*, 53 Mich App 45; 218 NW2d 685 (1974); *American Concrete Institute v State Tax Commission*, 12 Mich App 595; 163 NW2d 508 (1968).

Id at 756.

The Court of Appeals applied the *Walcott* and *Ladies Literary Club* tests to a nonprofit daycare center for preschool-aged children in *Association of Little Friends, Inc v Escanaba*, 138 Mich App 302; 360 NW2d 602 (1984). The Court concluded that the

school did not qualify for the exemption because it did not sufficiently relieve the government's burden of educating pre-primary aged children:

> Our legislative scheme of education mandates neither preschool education nor vocational training. MCL 380.1285; MSA 15.41285; MCL 380.1287; MSA 15.41287. Although we recognize that the association conducts educational activities of great benefit to the community, petitioner has not shown that its activities "sufficiently relieve the government's educational burden to warrant the claimed educational institution exemption." *Kalamazoo Nature Center, Inc v Cooper Twp*, 104 Mich App 657, 663; 305 NW2d 283 (1981); *Circle Pines Center* [*v Orangeville Twp*, 103 Mich App 593; 302 NW2d 917 (1981)]

Id at 308.

This Court last addressed the meaning of the term "educational institution" in *Michigan United Conservation Clubs v Lansing*, 423 Mich 661; 378 NW2d 737 (1985). In that case, this Court again analyzed the qualitative and quantitative nature of the educational services provided by the petitioner and compared it to that supported by public taxation. The petitioner provided hunter safety classes for minors, published a booklet compiling the State's concealed weapons and firearm safety laws, and published an atlas of the county road system and fishing streams. *Id* at 669. In fact, with respect to the last category, the petitioner completely relieved the burden of the State Police and the Department of Natural Resources to publish such atlases. *Id*. This Court concluded that, while the petitioner could be viewed as relieving some governmental burden of educating the public, the relief it afforded was not substantial so as to satisfy the statutory exemption:

> Notwithstanding this evidence, we agree with the Court of Appeals analysis of the educational exemption issue. Const 1963, art 4, § 52 recognizes that

> conservation and the wise development of our natural resources are paramount concerns. However, conservation education per se is not mandated. Therefore, we fail to see how MUCC's public school programs "fit into the general scheme of education provided by the state." *Ladies Literary Club, supra* at 755. Similarly, there was no evidence presented to indicate that any state entity is required to publish atlases of county maps or summaries of the firearm laws.
>
> Evidence established that MUCC teaches minors about hunting safety. Although the applicable statutes were not mentioned, we note that minors are generally required to pass a firearm safety competency examination prior to receiving a license. See MCL 316.303; MSA 13.1350(303). Furthermore, the Hunting and Fishing License Act requires the Department of Natural Resources to provide a course of instruction in the safe handling of firearms. MCL 316.327; MSA 13.1350(327). However, we do not believe that this program substantially reduces the government's educational burden.

Id at 669-670.[3]

This authority discussed above establishes that the term "educational institution" is properly interpreted under *Walcott* and *Ladies Literary Club* as being an institution that provides education services which are quantitatively and qualitatively equivalent to the educational services provided by the State and supported by public taxation. For over a century, courts of this state have repeatedly and consistently reaffirmed this to be the appropriate meaning of "educational institution" under the exemption statute. Indeed, even Harmony, in its application, does not challenge the appropriateness of this test, only

[3] In *Moorland Twp v Ravenna Conservation Club, Inc*, 183 Mich App 451; 455 NW2d 331 (1990), the Court of Appeals relied upon this Court's decision in *MUCC*, *supra*, to deny the petitioner tax exempt status as an educational or scientific institution. While the petitioner provided assistance to the Department of Natural Resources and to public schools, the Court of Appeals concluded that the activities did not fall within the state's general scheme of education and did not substantially reduce the government's educational burden. *Id* at 457.

the Tax Tribunal's and Court of Appeals' application of the test in this case. This Court has stated on many occasions that "under the doctrine of stare decisis, principles of law deliberately examined and decided by a court of competent jurisdiction should not be lightly departed." *People v Jamieson*, 436 Mich. 61, 79; 461 N.W.2d 884 (1990). Where no party, lower court or tribunal, nor even the Legislature[4] has ever challenged that this test is the appropriate test, departure from this precedent is unwarranted – particularly under the specific facts at issue in this case.

II. The Tax Tribunal and the Second Panel of the Court of Appeals properly applied the *Walcott* and *Ladies Literary Club* test to hold that Harmony did not sustain its burden of proving that it was entitled to the educational institution exemption.

As even Harmony argued in both the tax tribunal and the Court of Appeals, the *Walcott* and *Ladies Literary Club* test is the appropriate test – Harmony merely argues that the MTT and the Court of Appeals incorrectly applied the appropriate test. Harmony recognized that the *Walcott* test could easily be adapted to apply in the current context of pre-primary education, arguing that it was entitled to the exemption because its preschool/kindergarten programs fell within the state's general scheme of education and

[4]The City recognizes that the doctrine of legislative acquiescence is disfavored because a legislature speaks through its actions, not its inaction. However, the fact is that, with the exception of a single instance, the Legislature has not amended the statute in response to any of this Court's or the Court of Appeals' decisions interpreting the meaning of "educational institution." Following this Court's decision in *Ladies Literary Club* concluding that organizations which provide cultural services to the public are not entitled to exemption, the Legislature amended the statute to include a second sentence in MCL 211.7n, specifically exempting organizations such as the Ladies Literary Club. The Legislature did not amend the statute with respect to the Court's construction of "educational institution."

that Harmony makes a substantial contribution to the relief of the burden of government. As evidenced by the factual record, the Tax Tribunal's and the Court of Appeals' opinions, Harmony's position is without merit.

A. Harmony's preschool program does not fall within the State's general scheme of education and does not substantially reduce the government's educational burden.

In its initial opinion, the Tax Tribunal properly concluded that Harmony's preschool program did not fall within the state's general scheme of education because preschool education is not per se mandated. (MTT September 25, 2012 opinion, page 18 of 26). *MUCC, supra* at 669. The first panel of the Court of Appeals disagreed and declined to follow *Association of Little Flowers*, concluding that the ". . . Legislature and Board of Education generally recognize the importance of prekindergarten education." *Harmony Montessori Center v City of Oak Park (Harmony I),* (Docket 312856, February 18 2014), slip op page 2. The Court's reasoning was flawed. In contrast to factors such as statutory mandates, state licensing, and degree conferral, mere support or encouragement by the State has never been considered by this Court or the Court of Appeals as sufficient to bring an activity under the statutory exemption for "educational institutions." *MUCC, supra*; *Moorland Twp, supra*. Even assuming that general support was sufficient, and that the references cited by the original Court of Appeals panel evidenced the State's general support for preschool education, there is no question that Harmony's preschool program was not comparable to the programs which are referenced in these statutes. It is undisputed that the only publicly supported preschool program

during the tax years at issue is the Great Start Readiness Program (GSRP).[5] It is also undisputed that, despite the opportunity to present evidence of such on remand, Harmony could prove, at best, that only two of its students would have qualified for the GSRP. Likewise, Harmony's argument that it relieves the State's burden of educating students *in the future* by reducing the need for remedial or special education services, is without merit given that Harmony failed to sustain its burden of offering competent, substantial or material evidence that this was factually true. Ms. King's (or counsel's) subjective opinion that such a future burden might be reduced does not constitute evidence that this is true. *Harmony Montessori Center v City of Oak Park (Harmony II)*, (Docket No. 326870, October 13, 2016), slip op page 5 at FN 24. Moreover, predicating a tax exemption for one year on possible outcomes in a subsequent year would be speculative and unworkable. In contrast to the appellate theories advanced by Harmony, the Tax Tribunal's application of the *Walcott* and *Ladies Literary Club* tests was supported by material, competent and substantial evidence and the Court of Appeals properly affirmed. This Court's intervention is not warranted.

[5] As is more fully discussed in the City's answer, it is partially on this basis that Harmony's reliance on *Petoskey v Bear Creek Township*, 1996 WL 20565 (1986) is misplaced. In *Petoskey*, state-supported programs (elementary, kindergarten *and preschool*) were an available alternative to a high percentage - if not all - of the petitioner's students because at least one of the relevant public school districts provided preschool free of charge to residents and on a tuition-basis to non-residents. *Petoskey*, at *2.

B. Harmony's kindergarten program does not fall within the State's general scheme of education and does not substantially reduce the government's burden of education.

As with preschool education, kindergarten education is not mandated by the State and the Tax Tribunal's initial decision concluding that Harmony's kindergarten program did not fall within the State's general scheme of education was correct. (MTT September 25, 2012 opinion, page 18 of 26) The initial panel of the Court of Appeals held that, although kindergarten is not mandated, Harmony's kindergarten program does fall within the State's general scheme of education because the State does provide public funding to school districts which choose to provide kindergarten. It bears noting that Harmony is licensed by the State as a "child care center." (Joint Statement of Facts, ¶ 14) While Harmony teaches a kindergarten-level curriculum to some of its students, because Harmony is not accredited by the State of Michigan under the Revised School Code, MCL 380.1, *et seq*, and Harmony's teachers are not certified by the State of Michigan, the kindergarten education provided by Harmony necessarily cannot be considered the qualitative equivalent to the kindergarten education provided by the State and supported by public taxation. The Tax Tribunal's decisions were supported by material, competent and substantial evidence.

The above notwithstanding, even giving Harmony the benefit of the doubt that its kindergarten program did fall within the general scheme of education supported by public taxation, the Tax Tribunal properly concluded that Harmony's kindergarten program did not substantially relieve the State of its educational burden. As is fully discussed in the

City's answer to Harmony's application for leave to appeal, the Tax Tribunal's application of the *Walcott* test and conclusion that only a small percentage of Harmony's students could and would attend a State funded kindergarten was supported by competent, material and substantial evidence. Harmony contends that the Tax Tribunal clearly erred in finding that it did not satisfy *Walcott's* would test because neither side presented evidence that a parent who was paying to send their child to Harmony would only, in Harmony's absence, send their child to another Montessori school. Harmony's argument turns the applicable burden on its head. It was not the City's burden to prove that Harmony students would *not* attend State-supported schools – it was Harmony's burden to prove that a substantial portion would. Harmony's failure to sustain this burden does not provide grounds for this Court substituting its judgment for the Tax Tribunal. The Court of Appeals properly affirmed the Tax Tribunal's decision based upon the record evidence and this Court's intervention is not warranted.

CONCLUSION AND RELIEF REQUESTED

Respondent-Appellee, the City of Oak Park, respectfully requests that this Honorable Court deny Petitioner's application for leave to appeal.

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Dated: August 23, 2017
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PROOF OF SERVICE

Proof of Service: I certify that a copy of the foregoing **RESPONDENT-APPELLEE, CITY OF OAK PARK'S SUPPMENTAL BRIEF,** and this **PROOF OF SERVICE** were served as indicated below. Date of Service: August 23, 2017 Signature: /s/ Susan M. Westphal	
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